

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2015

**Legislative Incarceration Fiscal Note
REVISED**

BILL NUMBER: House Bill 78 (First Edition)

SHORT TITLE: Enact Medical Cannabis Act.

SPONSOR(S): Representatives Alexander, Carney, Harrison, and Cunningham

FISCAL IMPACT

(\$ in millions)

Yes No No Estimate Available

	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
State Impact					
General Fund Revenues:					
General Fund Expenditures:					
State Positions:					
NET STATE IMPACT	Likely budget cost. See Assumptions & Methodology section for additional details.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:

The Administrative Office of the Courts

EFFECTIVE DATE: When it becomes law and applies to acts committed on or after that date.

TECHNICAL CONSIDERATIONS:

None

Revision Note: *This note has been revised to correct the fiscal year column headers in the table above.*

FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact to address a new chargeable offense being enforced, adjudicated and having penalties applied to those convicted of the new offense. However, given there is no historical data on this new offense, or similar offenses to use as a proxy for predicting the total number of new offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of this crime:

- Administrative Office of the Courts: \$165 per Class 1 misdemeanor disposition and \$88 per Class 2 misdemeanor disposition
- Indigent Defense Services: \$182.05 in district court
- Community Corrections: Minimum of \$1,853 per Class 1 misdemeanor conviction and \$1,606 per Class 2 misdemeanor conviction

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

Section 1 of this bill creates a new Article 43, North Carolina Medical Cannabis Act, in Chapter 90 of the General Statutes. Section 1 introduces multiple statutes including civil and criminal protections, as well as various restrictions and conditions, for patients, caregivers, producers of the medical cannabis, and physicians. The bill provides guidance and protections on court-related matters such as child visitation and custody, child neglect and endangerment, constructive possession, conspiracy, aiding and abetting, probable cause for searches, and conduct of law enforcement officers during an investigation.

New G.S. 90-730.4(a) prohibits a person from operating, navigating, or being in physical control of any motor vehicle, aircraft, or motorboat while impaired by cannabis, undertaking any task under the influence of cannabis when doing so would constitute negligence or professional malpractice, and smoking cannabis in a school bus or other form of public transportation, on any school grounds, in any correctional facility, or in any public place in this state. This section clarifies that a qualified patient should not be considered impaired solely due to the presence of cannabis metabolites in the individual's system. Violation of these prohibitions is to be charged under existing penalties.

Subsection (d) creates a new Class 2 misdemeanor offense punishable by a fine of \$500, in addition to any other penalties, for fraudulent representation to a law enforcement official in circumstances relating to medical cannabis. Subsection (e) states that a licensed producer of medical cannabis that sells, distributes, dispenses, or transfers cannabis to an individual other than a registered card holder is subject to existing penalties. New G.S. 90-730.5(h)(1) and (h)(2) creates two new infractions subject to a fine not to exceed \$150, when a patient or a caregiver fails to notify the North Carolina Department of Health and Human Services (NCHHS) of certain changes to personal identifying information. **Subsection (m) creates a new Class 1 misdemeanor offense** punishable by a fine not to exceed \$1,000 for a government employee who breaches the confidentiality of certain personal identifying information gathered by NCHHS. Subsection (o) allows for judicial review of an administrative decision made under this section.

New G.S. 90-730.6(g) and (h) provide provisions for exemptions from existing criminal laws for producers or retailers of medical cannabis products. Violation of these provisions is to be charged under existing penalties. **Subsection (p) creates a new Class 1 misdemeanor offense** punishable by a fine not to exceed \$1,000 for a government employee who breaches the confidentiality of certain personal identifying information gathered by the North Carolina Department of Agriculture and Consumer Services. Subsection (t) allows for judicial review of an administrative decision made under this section. New G.S. 90-730.7 provides conditions for when the need for use of medical cannabis is allowed as an affirmative defense to a criminal charge and new G.S. 90-730.8 provides immunity for physicians. New G.S. 90-730.10 contains a severability clause for this Article.

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision. JRA also created the Statewide Misdemeanant Confinement Program (SMCP) for housing misdemeanants with sentences between 90 and 180 days in county jails (misdemeanants with shorter sentences were already the responsibility of the counties). County participation in the program is voluntary. The SMCP pays

participating counties for misdemeanants' housing, transportation, and medical costs. In 2014, the program was expanded to include all misdemeanants with sentences longer than 90 days. The Sentencing and Policy Advisory Commission does not track county jail capacity, so it is not possible to estimate the impact of new or increased misdemeanor penalties on county jails.

Judicial Branch

The Administrative Office of the Courts provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Section 1 of the bill creates two new Class 1 misdemeanor offenses and one new Class 2 misdemeanor offense. Because these are new offenses, AOC does not have historical data upon which to estimate the number of charges that might occur. AOC provides estimates of the average cost to the court for a charge by offense class. For every additional person charged with a new Class 1 misdemeanor, the average cost to the court would be \$165. For every additional person charged with a new Class 2 misdemeanor, the average cost to the court would be \$88.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. IDS estimates that the cost of a new Class 1 or 2 misdemeanor will be \$182.05 per case for a private appointed counsel (PAC) attorney in district court. This estimate assumes the appointment of a PAC attorney. In districts that have Public Defender offices, cases may be handled by those offices. In those instances, these costs may not be incurred.

Department of Public Safety –Prison Section

This bill creates two new Class 1 misdemeanor offenses and one new Class 2 misdemeanor offense. The North Carolina Sentencing and Policy Advisory Commission expects no impact on the prison population because all misdemeanor offenders who receive active sentences will serve them in the local jail. Therefore, the Department of Public Safety does not anticipate an impact on prison custody projections.

Department of Public Safety – Community Correction Section

For felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

JRA essentially eliminated the distinction between “community” and “intermediate” supervision. Under structured sentencing, the two types of supervision were each defined by a set of specific sanctions. Under JRA, both community and intermediate probation may now include electronic monitoring, short-term periods of confinement, substance abuse assessment, monitoring, and treatment, participation in educational programs or vocational skills development. Whether a probationer is subject to more stringent conditions is determined by the results of a risk-needs assessment administered by the Department of Public Safety.

All types of post-release supervision, including intermediate or community sanctions, are supervised by the Community Corrections Section (CCS); CCS also oversees community service. General post-release supervision and supervision of intermediate and community offenders by a probation officer costs \$123 per offender, per month; no cost is assumed for those receiving unsupervised probation, or who are only

ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to active sentences requiring post-release supervision, intermediate sanctions and supervised probations.

In FY 2012-13, 27 percent of Class 1 misdemeanor offenders received active sentences; two percent received intermediate sentences; and 71 percent received community punishments. Active misdemeanor sentences of less than 180 days are served in local jails and do not require any post-release supervision. The average lengths of intermediate and community punishment imposed for this offense class were 18 and 15 months, respectively. Therefore, at a minimum, one Class 1 misdemeanor conviction resulting from Section 1 of this bill will require at least 15 months of supervision. The cost of 15 months of supervision is \$1,853 per offender (\$123.50 per month times 15 months).¹

In FY 2012-13, 31 percent of Class 2 misdemeanor offenders received active sentences; one percent received intermediate sentences; and 68 percent received community punishments. Active misdemeanor sentences of less than 180 days are served in local jails and do not require any post-release supervision. The average lengths of intermediate and community punishment imposed for this offense class were 15 and 13 months, respectively. Therefore, at a minimum, one Class 2 misdemeanor conviction resulting from Section 1 of this bill will require at least 13 months of supervision. The cost of 13 months of supervision is \$1,606 per offender (\$123.50 per month times 13 months).²

SOURCES OF DATA: Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

TECHNICAL CONSIDERATIONS: None

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¹ Due to the effective date of December 1, 2015 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2015-16. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2016-17.

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